

U.S. Environmental Protection Agency

Hawaii Department of Agriculture

FY2013 Draft End-of-Year Review

Pesticide Performance Partnership Grant

Executive Summary- This report covers workplan activities conducted in FY13, and is based on discussions and review of documents throughout the year and during the end of year visit. Discussions were held during the end of year visit that focused on recent changes to the pesticide program at Hawaii Department of Agriculture (HDOA). Recommendations for improvements can be found within the body of this report. Recommendations focus primarily on addressing a backlog of inspection files that need review, revising policies, especially the enforcement response policy, and increasing the number of WPS Tier 1 inspections to more closely match previous years' numbers. It should be noted that HDOA had already started to make progress on our recommendations at the time of this writing. This report covers the second year of a three-year performance partnership grant between Hawaii Department of Agriculture and EPA Region 9. This grant was put into place to ease administrative burdens on HDOA and to allow for more long-term planning for the Pesticide program.

I. BACKGROUND

A. General

1. Project Period: October 1, 2012 – September 30, 2013.

2. EPA Assistance Agreement Number: #BGOOT64412 **3.**

Review method: On-site

4. Review participants:

EPA: Mary Grisier, Hawaii Pesticide Project Officer
Grantee: Thomas Matsuda, Pesticide Program Manager, Avis Onaga, Case Preparation Officer, and Dean Yoshizu, Compliance Officer

5. Review date(s) and location: April 28, 2014-May 1, 2014 at the Hawaii Department of Agriculture offices in Honolulu.

B. Scope of Review

The Hawaii Department of Agriculture (HDOA) has primary enforcement responsibility over pesticide use activities in the State of Hawaii and is the lead state agency for the enforcement of the Hawaii Pesticides Law (Chapter 149A, Hawaii Revised Statutes) and the Hawaii Administrative Rules (Chapter 66, Title 4). There are approximately 1,110,000 acres in farmland, 7,500 farms, 6,400 agricultural workers, 3,800 Agricultural Operators, 1,200 certified applicators, 22 licensed Restricted Use Pesticide (RUP) dealers, 18 pesticide producing establishments, and seven licensed aerial applicators in the state of Hawaii. Major crops in Hawaii include seed corn, coffee, papaya, macadamia and nursery plants. Average farm size in Hawaii is 150 acres. HDOA maintains a database of all pesticides licensed in Hawaii. The HDOA Pesticide program consists of

approximately 14 individuals over 4 islands performing inspection, education, registration, administrative, and other pesticide program activities.

The Hawaii Pesticide program is supported by both State (general and revolving) and federal (USDA and USEPA) funds. HDOA and USEPA Region 9 had one active Performance Partnership Grant (PPG) with pesticide related activities to be carried out in Federal Fiscal Year 2013. The purpose of the PPG is to reduce paperwork and provide administrative relief and flexibility to HDOA.

The FY13 end-of-year evaluation was primarily accomplished by reviewing quarterly reports and correspondence received from HDOA throughout the year, and an on-site visit by Mary Grisier, project officer for HDOA. Information gathered was compared to the outputs and standards in the cooperative agreements to determine if HDOA had met its commitments.

II. FINANCIAL

A. Budget Analysis

The following table summarizes funding and expenditures for the FY13 cooperative agreement. In FY13, approximately three FTE were supported by EPA funding (Inspector, Pesticide Specialist, and Chemist).

Interim Financial Status Reports (FSRs) for FY13 were received and indicated that HI Department of Agriculture was drawing down funds in an appropriate manner, and did not have an excess amount of remaining funds at the end of FY13. It should be noted that the project period extends to September 30, 2014, so HDOA may spend remaining funds up until that date.

Work Plan Component	EPA Funding	Grantee Funding*	Total Funding
Enforcement	\$212,621	\$42,617	\$255,238
Programs	\$139,704	\$26,394	\$166,158
C&T	\$ 30,000	\$34,948	\$ 64,948
TOTAL	\$382,325	\$103,959	\$486,284

* State is required to provide 50% match in C&T, 15% (by policy) for other programs.

Re-budgeting –There was no re-budgeting in FY13.

III. GENERAL GRANT ADMINISTRATION

A. Recommended Actions for Grants Office - None

IV. COMPLIANCE AND ENFORCEMENT

A. Grantee Reports

1. Pesticide Enforcement Outcome Measures

HDOA reported on the three Office of Enforcement and Compliance Assurance (OECA) measures for pesticide enforcement (Appendix 1). Values reported were:

- a. Repeat violator: 0% of actionable inspections included entities receiving an action in the past three years.
- b. Verified compliance: 74% of actionable inspections resulted in verified compliance.
- c. Cost per actionable inspection: \$20,279.91 is the cost per actionable inspection.

The cost per actionable inspection increased significantly from \$9,483.56 in FY12 to \$20,279.91. It should be noted that HDOA has a large backlog of inspection files that have not been processed; the values for the above measures are therefore not reflective of the actual costs.

2. Summary of 5700-33H reports – attached as Appendix 2.

3. Annual Summary of Inspections and Enforcement Actions

HDOA exceeded the number of projected inspections (266 projected, 430 completed). This is approximately 10 fewer inspections conducted than in FY12. Twenty warning letters were issued, down from 70 in the previous year, and three cases were assessed fines in FY13, versus two in FY12. There were no inspection files referred to EPA for enforcement review and possible development in FY13, while there were eleven forwarded in FY12. This is due in large part to an extensive backlog of inspection files to be reviewed and processed by HDOA.

B. Case File and Enforcement Action Evaluation

1. Significant Cases (FIFRA Section 27)

There were no high level episodes referred to HDOA in FY13. Each island maintains a separate list of all episodes and complaints received. These are recorded and reported to EPA.

2. Routine Inspections – other than Worker Protection

Forty inspection files were reviewed. Inspection files were randomly selected from actionable and non-actionable inspections. Inspections selected represented the work of five different inspectors. Inspections continue to document compliance/non compliance

with pesticide laws, and in most cases include necessary evidence such as photographs, labels and invoices. It should be noted that by the time the project officer reviews inspection files, they have been reviewed and errors have been corrected by the HI case developer or the inspector. Discussions with the case developer indicate that inspectors, in general, need to pay closer attention to ensuring that reports are clearly written, grammatical errors are corrected, and that reports are “enforcement ready”. While no inspection files were forwarded in FY13, it is a requirement that states forward any inspections conducted with a federal credential, or that reveal a federal violation, to EPA. **Recommendation 13-01:** HDOA must forward inspections to EPA that either 1) were conducted with a Federal credential, or 2) reveal a potential federal violation.

There were no Special Requests issued to HDOA during FY13. HDOA did not complete any container/containment inspections, as there are no facilities currently identified in Hawaii that meet the necessary criteria. The Pesticide Container/Containment Inspection and Enforcement Accomplishment Report (EPA C/C Form 5700-33H) is included in Appendix 3.

1. Oversight inspections (non-WPS) - none

C. Compliance Priority – Worker Protection Standard (WPS)

1. Reports

a) The Pesticide Worker Protection Standard Inspection and Enforcement Accomplishment Report (WPS Form 5700-33H) is included in Appendix 4.

2. Significant WPS Cases (FIFRA Section 27) - none 3. WPS oversight inspections – none 4. WPS case file evaluation

HDOA conducted thirteen neutral-scheme WPS Tier 1 inspections at establishments throughout Hawaii, down from forty in FY12. There were no enforcement actions issued for any Tier 1 inspections conducted in FY13. One Tier 2 inspection was also conducted, down from four the previous year.

Recommendation 13-02: HDOA has seen a downward trend in overall inspection activity in FY13, especially with regard to WPS Tier 1 inspections. HDOA should make every effort to increase the number of WPS Tier 1 inspections in the coming year, in keeping with past practices.

5. Worker Protection Risk-Based Targeting Strategy

a) Implementation of Risk-Based Targeting Strategy

A WPS targeting strategy was developed in 1994. Targeting was based partly on how many restricted-use pesticides were purchased by growers, as well as how many workers were employed by the establishment. Since that time, agriculture has changed dramatically in Hawaii. The number of large farms with many workers has greatly decreased. Farms are smaller (average farm size is 150 acres) and growers buy smaller quantities of pesticides. Inspectors have found that they can identify establishments that fall under the WPS by conducting routine agricultural use inspections and asking questions related to worker activity during the inspection. They will then return at a later date to conduct a WPS inspection. Larger establishments are inspected approximately every two years.

D. Inspection and Enforcement Support

1. Training

HDOA conducts an annual pesticide training workshop for all HDOA Pesticide Program staff (inspectors, education, and registration staff) and outer Pacific Island pesticide programs in November of each year. The workshop also included medical monitoring and respirator fit-testing for inspectors. The project officer attends this workshop, in conjunction with the end of year visit. Due to furloughs, the project officer was unable to travel in November, and did not conduct the end of year review until April, 2014. The workshop, while a valuable source for inspectors to get updates on programs and to network with colleagues, will have a format change for the coming year. There will be more focus on training, including report writing and inspection techniques, as well as field exercises. The workshop will be extended to a full five days. An informal request has been made to EPA to send the enforcement liaison to the workshop to ensure that EPA requirements are fully woven in the workshop.

Recommendation 13-03: HDOA should formally request that EPA send the enforcement liaison to the upcoming November workshop at the HI Department of Agriculture. This will ensure that state inspectors are provided the most up-to-date requirements for their work under the cooperative agreement.

In FY13, HDOA had seven federally-credentialed inspectors. Training records were properly maintained at the Honolulu office, and inspectors had met the commitments outlined in the FIFRA inspector credential authorization agreement. HDOA hired an additional inspector for Oahu during FY13, and her training began immediately by accompanying the senior inspector on Oahu on all types of pesticide inspections. The credential was issued in August, 2014.

Below is a list of training courses attended by HDOA staff in FY13:

TRAINING/MEETING	DATE
ALSTAR/NPIRS Training	10/2012

PREP-Compliance Monitoring	4/2013
PREP – Program Management for New Supervisors	7/2013
North American Chemical Residue Workshop	7/2013
National Pesticide Applicator C&T Workshop	8/2013
PREP – Sr. Executive Lab Mgt.	10/2013

2. Enforcement Response Policy

The Hawaii Department of Agriculture revised and adopted its Pesticide Enforcement Action and Penalty Assessment Schedule on October 24th, 2006. Review of case files indicates that HDOA follows its enforcement response policy, however there are numerous areas where the policy is in need of updating. The Department of Agriculture has nearly completed the task of filling positions on the Governor’s Pesticide Advisory Committee, which when fully formed, will take up the issue of revision of pesticide regulations in Hawaii. HDOA is encouraged to continue to identify those areas that are lacking in the ERP, so that at a future date, changes can be made.

3. Neutral Inspection Scheme

Applicators that are likely to use more RUPs are inspected more frequently than those that do not. This is based on amounts of RUPs purchased divided by the number of applicators employed by a business. With regard to marketplace inspections, they are conducted primarily based on complaints, rather than through a neutral inspection scheme. This has been discussed during previous reviews as an area for additional focus by HDOA. HDOA should consider whether these overall approaches to targeting inspections are still appropriate and effective.

4. Inspection and Enforcement Procedures

Discussions were held throughout the year between HI inspection staff and EPA as procedural issues arose. HDOA has revised the Branch Standard Operating Procedures, which includes neutral inspection procedures. HDOA has one case development officer that reviews all files as they come in from the inspection staff. Over the past several years, a backlog of inspection files has been building. The case developer, in addition to working up inspection reports, also responds to numerous information requests from the public. This has begun to take up a large percentage of her time, leaving little time to review and develop cases. The more serious cases that lead to civil complaints are sent to the deputy attorney general’s office for review and concurrence. The deputy AG’s office also has a backlog of civil cases to review, which results in penalty actions not being issued. Currently, there are at least ten civil complaints in the deputy AG’s office awaiting review, dating back to 2012. The Pesticide Program has at least 15 additional

complaints waiting to be submitted. These enforcement-related issues and how to resolve them were the primary focus of the FY13 review. HDOA must take immediate action to reduce the backlog of inspection reports, and to identify long-term solutions to this issue as well as to work with the Deputy Attorney General's office to reduce the backlog of civil actions that have not been issued by that office.

5. Quality Assurance

HDOA staff worked consistently on a revised Quality Assurance Program Plan (QAPP) during FY13, and the QAPP was approved by EPA on February 24, 2014. The Chemical Analysis Laboratory operates a state-of-the-art pesticide residue laboratory for the analysis of a wide range of plant, soil, product and environmental samples in support of enforcement and registration activities. In 2013, the Hawaii Department of Agriculture Laboratory (Lab) participated in the Pesticide Residue Check Sample Program administered by the State of Wisconsin Department of Agriculture. The Lab received soil samples in February 2013 and plant samples in October 2013. The Lab performed well, correctly identifying all pesticides in each of the samples and not reporting any false positive results. They also accurately determined concentrations for 7 of 8 pesticides in soil and 7 of 8 pesticides in plant material. For cyfluthrin and propiconazole, the two pesticides with results outside of acceptable limits, the Lab is working to refine methods.

6. Special Activities

In cooperation with EPA, HDOA is providing ongoing support to outer Pacific island pesticide program staff on import, inspection, enforcement, and certification issues. As in previous years, HDOA extended an invitation to outer island inspectors to attend the Inspector Workshop. Attendance at the workshop provides an opportunity for the inspectors to receive medical monitoring exams and respirator fit tests, as well as to participate in discussions with fellow inspectors and to receive important training.

E. New Legislation and Regulations

Two pesticide-related pieces of State legislation were proposed in FY13.

Act 105 – Rewrites Section 2, Chapter 49A of the HI Revised Statutes	Implements a pesticide use reporting system for restricted use pesticides, to be posted on the HDOA website. (Proposed)
HR 100 and HR 129	Requests HI Dept. of Health to establish a taskforce to study the health effects of Atrazine, and report to the legislature by 10/31/13. (Passed)

Local Legislation - The County Council of Kauai passed a law requiring large users of restricted use pesticides to disclose what they are using and in what quantities. As of this writing, a Federal judge had struck down this law, citing preemption by the State. The County Council of Hawaii passed a bill restricting open air propagation of genetically modified organisms on Hawaii, continuing a trend by county leaders to seek local control over crops grown and pesticides used.

F. Action Items from Previous Reviews

Recommendation 10-02: HDOA should review their enforcement penalty policy and identify areas that need revision or update.

Status: This was discussed during the end of year review, and during the FY15 cooperative agreement negotiations. HDOA understands where the penalty policy has weaknesses and/or is problematic, and plans to strengthen this and other parts of HI's pesticide rules in the near future. These changes will require a formal change in Hawaii's Pesticide Law.

Recommendation 10-03: HDOA should develop a neutral scheme for conducting marketplace inspections. One approach would be to select an EPA priority area (such as products that make public health claims) to create a neutral inspection scheme. **Status:** This recommendation remains in effect; HDOA should review its targeting strategies to ensure that they are still effective.

G. Conclusions and Recommendations for Compliance/Enforcement

EPA has significant concerns with the backlog of inspection files to be processed, and the resulting lack of enforcement actions issued, as well as the lack of inspections forwarded to EPA for review/enforcement.

Recommendation 13-04: HDOA must identify ways to address the backlog of inspection files, whether through assigning inspection staff to review files or hiring additional case developers. Solutions to the backlog that also exists with cases at the Deputy Attorney General's office must also be identified. (NOTE: At the time of this writing, HDOA had assigned inspection staff to assist in reviewing inspection files, in order to decrease the backlog.)

Recommendation 13-05: HDOA is asked to identify those policies and documents in need of revision and a plan put in place to make the necessary updates. (NOTE: At the time of this writing, several changes had been put in place, including additional personnel to review inspection files, and the AG's office had also hired an assistance to focus on pesticide civil cases.)

V. PROGRAMS

A. Worker Safety – C&T

1. Previous Recommendations - none 2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDOA had 1106 certified commercial and 375 private applicators at the end of FY13, a total that has decreased by nearly 500 from FY12. HDOA administered exams and reviewed 199 courses for continuing education units, compared to 154 the previous year. HDOA also provided 37 presentations to certified applicators during the course of the year, up from eight the year before. Honolulu staff cover exam administration and consultative visits on Oahu, Kauai, Maui and Molokai. The island of Hawaii is covered by an additional employee based in Hilo. Fifteen courses were monitored by HDOA in FY13, down from 23 in FY12. Certification reporting in CPARD was completed by HDOA in a timely manner.

HDOA's databases for certified applicators as well as for tracking continuing education units are cumbersome and not integrated. The Pesticide Branch is embarking on a project to integrate the Education, Enforcement and Registration programs into one cohesive Integrated Pesticides Information System. This is welcome news, and will ultimately be an important tool for staff once it is operational.

HDOA worked closely with the Cooperative Extension Service (CES), meeting at least twice per year with representatives from CES Pesticide Applicator Training Program, at the University of Hawaii. HDOA also meets with the Hawaii Pest Control Board, which reviews and approves applications for new pest control businesses in the state. University personnel travel to each of the neighbor islands to prepare applicators in core topics for the certification exam on a yearly basis. The University of HI is currently revising the core exam to make the questions more applicable and connected to the study material that applicators use to prepare for the exam.

Certification cards issued in Hawaii currently have a photo ID and bar code. Annual C&T Plan Reports for Hawaii and other states are available at: <http://cpard.wsu.edu/>

3. PART Review Measures - none 4. State/Tribe Feedback -

none 5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY13.

B. Worker Safety - WPS

1. Previous Recommendations - none 2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDOA conducted 33 consultative visits focused on WPS compliance. Consultative visits are scheduled when a new applicator becomes certified, or, if an applicator has received a notice of warning. A visit may be made to ensure that the applicator has subsequently come into compliance. HDOA is also responding to a recent increase in Chinese and Laotian immigrant farmers on Oahu by providing pesticide safety and WPS training at key locations. HDOA also provided outreach using the updated How to Comply Manual to agricultural establishments. HDOA meets several times per year with the University of Hawaii Cooperative Extension and the Pest Control Board of the Department of Commerce and Consumer Affairs to discuss training and WPS issues. In FY13, HDOA began holding Farmer Resource Workshops, designed as a “one stop shop” for farmers to obtain information on a wide range of topics. Topics range from proper pesticide use, agriculture loans and insurance, to soil conservation and air pollution regulations. These workshops have been held on Oahu, Maui and Kauai, and have been well-received.

In FY13, HDOA received special one-time funding to develop a slideshow which will be translated into several languages (Ilocano, Laotian, Mandarin, Cantonese and Tagalog) to provide workers and handlers with pesticide safety information. At the time of this writing, the slideshow was in the editing phase, and near completion in all languages. HDOA hopes to complete the project by September 30, 2014.

3. PART Review Measures - none 4. State/Tribe Feedback - none 5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY13. **C.**

Water Quality

1. Previous Recommendations - none 2. Accomplishments
a) Work-Plan Commitments & National Program Priorities:

HDOA continues to review new pesticide products for groundwater and surface water concerns. At the end of FY13, the Pesticides of Interest Tracking System (POINTS) had not been updated. Values remained the same as in FY 12; specifically, HDOA has evaluated 47 of 71 Pesticides of Interest (66%), is actively managing 15 of 16 Pesticides of Concern (POC; 94%) and is demonstrating progress for 9 of 15 actively managed POCs (60%). HDOA should update the POINTS system to reflect any changes, especially to indicate any additional pesticides currently under evaluation. Hawaii continues to use modeling to determine whether new chemicals may have the potential to leach into groundwater. Restricted use pesticide sales records are monitored to identify products that may affect water quality. HDOA has discussions with HI Department of Health (DOH) as well as registrants to discuss pesticides of concern for surface and ground water. The HI Department of Health is responsible for implementing the pesticides NPDES permit program in Hawaii.

3. PART Review Measures - none 4. State/Tribal Concerns - none 5. Conclusions and Recommendations

Recommendation 13-06: HDOA should ensure that the POINTS system is updated on a yearly basis, and that progress is made in evaluating pesticides of interest to Hawaii. The POINTS database has been updated, and all negotiated outputs due in FY13 have now been completed.

D. Endangered Species

**1. Previous Recommendations - none 2. Accomplishments
a) Work-Plan Commitments & National Program Priorities**

HDOA continues to consult and coordinate with other State agencies on Section 18 emergency exemption requests and special local needs registration applications.

3. PART Review Measures - none 4. State/Tribe Feedback – none 5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY13.